

Assembly Bill No. 833

Passed the Assembly September 2, 2003

Chief Clerk of the Assembly

Passed the Senate August 28, 2003

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2003, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 230 and 66271.7 of, and to add Sections 66271.6 and 66271.8 to, the Education Code, relating to sex equity in education.

LEGISLATIVE COUNSEL'S DIGEST

AB 833, Steinberg. Sex equity in education: athletics.

Existing law provides that no person shall be subjected to discrimination on the basis of, among other things, sex, in any program or activity conducted by any postsecondary educational institution that receives or benefits from state financial assistance or enrolls students who receive state financial aid. Existing law states that it is the intent of the Legislature that opportunities for participation in intercollegiate athletic programs in the community colleges, in the campuses of the California State University, and in the campuses of the University of California be provided on as equal a basis as is practicable to male and female students.

This bill would express various findings and declarations of the Legislature with respect to gender equity in athletics. The bill would set forth standards for determining whether an educational institution has effectively accommodated the interests and abilities of both sexes in athletics. The bill would prohibit the use of public funds in connection with an athletic program of a public postsecondary educational institution that does not provide equivalent opportunity to both sexes for participation and use of facilities. The bill would require an educational institution that is obliged to cut its athletic budget to do so consistently with its legal obligation to comply with both state and federal gender equity laws.

The people of the State of California do enact as follows:

SECTION 1. Section 230 of the Education Code is amended to read:

230. For purposes of this chapter, harassment and other discrimination on the basis of sex include, but are not limited to, the following practices:



(a) On the basis of sex, exclusion of a person or persons from participation in, denial of the benefits of, or subjection to harassment or other discrimination in, any academic, extracurricular, research, occupational training, or other program or activity.

(b) On the basis of sex, provision of different amounts or types of student financial aid, limitation of eligibility for student financial aid, or the application of different criteria to applicants for student financial aid or for participation in the provision of student financial aid by others. Nothing in this subdivision shall be construed to prohibit an educational institution from administering, or assisting in the administration of, scholarships, fellowships, or other forms of student financial aid, established pursuant to domestic or foreign wills, bequests, trusts, or similar legal instruments or by acts of a foreign government, which require that awards be made to members of a particular sex; provided, that the overall effect of the award of these sex-restricted scholarships, fellowships, and other forms of student financial aid does not discriminate on the basis of sex.

(c) On the basis of sex, exclusion from participation in, or denial of equivalent opportunity in, athletic programs. For purposes of this subdivision, “equivalent” means equal or equal in effect.

(d) An educational institution may be found to have effectively accommodated the interests and abilities in athletics of both sexes within the meaning of Section 4922 of Title 5 of the California Code of Regulations as that section exists on January 1, 2003, using any one of the following tests:

(1) Whether interscholastic level participation opportunities for male and female pupils are provided in numbers substantially proportionate to their respective enrollments.

(2) Where the members of one sex have been and are underrepresented among interscholastic athletes, whether the school district can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interest and abilities of the members of that sex.

(3) Where the members of one sex are underrepresented among interscholastic athletes, and the institution cannot show a history and continuing practice of program expansion as required in paragraph (2), whether the school district can demonstrate that the



interest and abilities of the members of that sex have been fully and effectively accommodated by the present program.

(e) If an educational institution must cut its athletic budget, the educational institution shall do so consistently with its legal obligation to comply with both state and federal gender equity laws.

(f) It is the intent of the Legislature that the three-part test articulated in subdivision (d) be interpreted as it has been in the policies and regulations of the Office of Civil Rights in effect on January 1, 2003.

(g) On the basis of sex, harassment or other discrimination among persons, including, but not limited to, students and nonstudents, or academic and nonacademic personnel, in employment and the conditions thereof, except as it relates to a bona fide occupational qualification.

(h) On the basis of sex, the application of any rule concerning the actual or potential parental, family, or marital status of a person, or the exclusion of any person from any program or activity or employment because of pregnancy or related conditions.

SEC. 2. Section 66271.6 is added to the Education Code, to read:

66271.6. The Legislature finds and declares all of the following:

(a) On June 23, 1972, Congress enacted Title IX of the Education Amendments of 1972 to the 1964 Civil Rights Act. This landmark legislation provides that: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.”

(b) While Title IX applies to all aspects of educational opportunities, it is well-known for opening the door to athletics for girls and women.

(c) In 1975, the United States Department of Health, Education and Welfare enacted regulations requiring that secondary and postsecondary schools comply with Title IX immediately. Those that could show real barriers to immediate compliance had just three years to meet the regulations, including equalizing their athletic programs.



(d) California state law has included several athletic equity provisions similar to those in Title IX since 1976. For example, the Sex Equity in Education Act provides, in subdivision (a) of Section 221.7, that: “It is the intent of the Legislature that opportunities for participation in athletics be provided equally to male and female pupils.” Similar provisions are expressly applicable to community colleges and the California State University.

(e) Enhancing athletic opportunities for young women and girls is vitally important because of the significant benefits athletic opportunities provide including greater academic success, better physical and psychological health, responsible social behaviors, and enhanced interpersonal skills. For some women and girls, the financial support made available through athletic scholarships can make it possible to attend college.

(f) Title IX has promoted significant advances for women and girls to participate in sports. While fewer than 32,000 women participated in college sports nationally prior to the enactment of Title IX, today approximately 163,000 women participate—a nearly five fold—or more than 400 percent increase. Athletic opportunities for girls at the high school level nationally have grown even more dramatically—from 294,000 in 1972 to 2,800,000 today—an 894 percent increase. California boasts the second highest number of high school girls participating in athletics nationwide—a total of 270,000 girls in California’s high schools now participate in interscholastic athletics.

(g) Men’s intercollegiate athletic participation has also increased, rising from approximately 220,000 in 1981–82 to approximately 232,000 in 1998–99. Between 1981–82 and 1998–99, football participation increased by 7,199; men’s participation in baseball, lacrosse, and soccer also increased during the same time period. High school boys’ participation rates have also increased—jumping 8.2 percent in the last three years in California.

(h) The dramatic increases in participation rates at both the high school and college levels since Title IX was passed show that when doors are opened to women and girls, they will rush through. Courts have repeatedly recognized that it is unfounded and unlawful to claim that women and girls are less interested in sports than men and boys. As one court stated, “interest and ability rarely



develop in a vacuum; they evolve as a function of opportunity and experience . . .” (Cohen v. Brown University (1st Cir. 1996) 101 F.3d 155, 179). Accordingly, courts have repeatedly rejected arguments that the assessed interest level of girls in athletics should determine Title IX compliance (Neal v. California State University (9th Cir. 1999) 198 F.3d. 763, 767). Thus, interest surveys cannot accurately determine whether an educational institution has effectively accommodated the interests and abilities of female students.

(i) The United States Department of Education uses a three-part test adopted in 1979 to determine whether an educational institution has met the key Title IX requirement that a school “effectively accommodate the interests and abilities of members of both sexes” when it comes to athletic participation. All three prongs of the test have been used successfully by schools to comply with Title IX, and have given schools flexibility in structuring their athletic programs. The three-part test neither imposes quotas or requires preferential treatment, nor requires mirror-image men’s and women’s sports programs. The lawfulness of the three-part test has been affirmed by every federal appellate court to consider the issue.

(j) Despite major advances in athletic opportunities for females since 1972, discrimination still limits athletic opportunities for girls and women at all educational levels today. For example, although women in Division I colleges are 53 percent of the student body, they receive only 41 percent of the opportunities to play sports, 36 percent of the overall athletic operating budgets, and 32 percent of the dollars spent to recruit new athletes.

(k) In California, the percentage of female athletes at California State University (CSU) campuses actually declined from 36 percent in 1977 to 30 percent in 1990. In 1993, California National Organization for Women (Cal NOW) filed suit against the CSU system alleging violations of California’s gender equity in athletics law. Ultimately, CSU and Cal NOW entered into a consent decree focusing on participation, expenditures, and grants-in-aid for women athletes. As a result of the consent decree, women now comprise over 52 percent of CSU athletes, expenditures on women’s sports have increased 315 percent in the last 10 years and grants-in-aid for female athletes have increased 232 percent during the same time period.



(l) Despite major gains for women under California and federal law, inequities in the treatment of men's and women's and boys' and girls' athletic teams at some educational institutions remain. These inequities include, but are not limited to, all of the following:

- (1) Participation rates for women and girls.
- (2) Number of sports offered.
- (3) Number of levels of teams.
- (4) Encouragement by spirit and band groups.
- (5) Facilities.
- (6) Locker rooms.
- (7) Scheduling of games and practice times.
- (8) Level of financial support by the district, school, booster club or clubs, and outside sponsors.
- (9) Treatment of coaches.
- (10) Opportunities to receive coaching and academic tutors.
- (11) Travel and per diem allowance.
- (12) Medical and training facilities and services.
- (13) Housing and dining facilities and services.
- (14) Scholarship money.
- (15) Publicity.

(m) Educational institutions at all levels are strongly encouraged to take immediate active steps toward full compliance with Title IX and California's gender equity in athletics laws by reviewing all aspects of their athletic program, including those factors listed in subdivision (l) where appropriate, to ensure that they are offering male and female student athletes equivalent opportunities to play sports and that they are treating male and female athletes fairly. The need to encourage and increase athletic participation by girls and women is especially strong at educational institutions serving inner-city and urban communities. Full compliance with Title IX is nondiscretionary.

SEC. 3. Section 66271.7 of the Education Code is amended to read:

66271.7. (a) It is the policy of the state that community college classes and courses, including nonacademic and elective classes and courses, shall be conducted without regard to the sex of the student enrolled in these classes and courses.



(b) No community college district shall prohibit any student from enrolling in any class or course on the basis of the sex of the student.

(c) No community college district shall require students of one sex to enroll in a particular class or course, unless the same class or course is also required of students of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or aide shall, on the basis of the sex of a student, offer vocational or school program guidance to students of one sex which is different from that offered to students of the opposite sex or, in counseling students, differentiate career, vocational or higher education opportunities on the basis of the sex of the student counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex.

(e) Participation in a particular physical education activity or sport, if required of students of one sex, shall be available to students of each sex.

SEC. 4. Section 66271.8 is added to the Education Code, to read:

66271.8. (a) The Legislature finds and declares that female students should be accorded opportunities for participation in public postsecondary educational institution athletic programs equivalent to those accorded male students.

(b) In apportioning public funds, public postsecondary educational institutions shall apportion amounts available for athletics to ensure that equitable amounts will be allocated for all students, except that allowances may be made for differences in the costs of various athletic programs. Notwithstanding any other provision of law, no public funds shall be used in connection with any athletic program conducted under the auspices of a public postsecondary educational institution, or any student organization within the postsecondary educational institution that does not provide equivalent opportunity to both sexes for participation and use of facilities. The factors considered when determining whether an educational institution has provided equivalent opportunity include, but are not limited to, all of the following:



(1) Whether the selection of sports and levels of competition offered effectively accommodate the athletic interests and abilities of members of both sexes.

(2) The provision of equipment and supplies.

(3) Scheduling of games and practice times.

(4) Selection of the season for a sport.

(5) Location of the games and practices.

(6) Compensation for coaches.

(7) Travel arrangements.

(8) Per diem.

(9) Locker rooms.

(10) Practice and competitive facilities.

(11) Medical services.

(12) Housing facilities.

(13) Dining facilities.

(14) Scholarships.

(15) Publicity.

(c) Whether a postsecondary educational institution has effectively accommodated the athletic interests and abilities of members of both sexes shall be assessed in any one of the following ways:

(1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments.

(2) Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interest and abilities of the members of that sex.

(3) Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a history and continuing practice of program expansion as required in paragraph (2), whether the institution can demonstrate that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

(d) Nothing in this section shall be construed to invalidate any existing consent decree or any other settlement agreement entered into by an educational institution to address gender equity in athletic programs.



(e) Nothing in this section shall be construed to require a public postsecondary educational institution to require competition between male and female students in school sponsored athletic programs.

(f) If an educational institution must cut its athletic budget, the educational institution shall do so consistently with its legal obligation to comply with both state and federal gender equity laws.

(g) It is the intent of the Legislature that the three-part test articulated in subdivision (c) be interpreted as it has been in the policies and regulations of the Office of Civil Rights in effect on January 1, 2003.



Approved _____, 2003

Governor

